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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ESTEBAN GALINDO,	)	Civil No. 08-CV-2080-WVG
	)	
Plaintiff,	)	ORDER GRANTING DEFENDANTS'
	)	MOTION FOR SUMMARY JUDGMENT
v.	)	
	)	[DOC. NO. 25]
M.A. SMELOSKY, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

Pending before the Court is Defendants' unopposed Motion for Summary Judgment. (Doc. No. 25.) The parties have consented to the undersigned Magistrate Judge's jurisdiction, and the matter has accordingly been referred to the undersigned for all purposes. (Doc. No. 24.) Defendants claim qualified immunity from suit and argue they did not violate Plaintiff's constitutional rights when they denied his request for dentures. As explained below, the Court GRANTS Defendants' motion and enters judgment in their favor.

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1 **I. FACTUAL BACKGROUND**<sup>1/</sup>

2 On August 21, 2006, the California Department of Corrections  
3 and Rehabilitation ("CDCR") entered into a stipulation addressing  
4 the dental care needs of its inmates as part of a class action. The  
5 class certified was "all California state prisoners in the custody  
6 of CDCR who have serious dental care needs." As part of the  
7 stipulation, CDCR agreed to implement Health Care Services Division  
8 Dental Policies and Procedures (hereinafter, "P&P").

9 The P&P was "designed to meet at least the minimum level of  
10 dental care necessary to fulfill [CDCR]'s obligations under the  
11 Eighth Amendment of the U.S. Constitution." The P&P outlines the  
12 procedure under the class action stipulation relating to dental  
13 prostheses in force from October 9, 2007 through at least July 2010.  
14 The P&P provides that a "dental prosthesis shall be constructed only  
15 when: . . . b. An inmate-patient is edentulous [toothless], is  
16 missing an anterior [front] tooth, or has seven or fewer posterior  
17 teeth in occlusion." Prior to August 2006, the CDCR's P&P manual  
18 also authorized dentures when an inmate had seven or fewer posterior  
19 teeth in occlusion, although the policy was worded differently.

20 Plaintiff claims that Defendants violated his "right to  
21 dental care." Under "Request for Relief" in his Complaint,  
22 Plaintiff seeks only an "order to defendants to provide the needed  
23 dental prosthesis." On or about January 7, 2008, Plaintiff was  
24 missing four teeth (two molars on each side of his jaw). On January

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<sup>1/</sup> The factual background is substantially adapted from Defendants'  
27 motion. The Court deems Defendants' facts admitted pursuant to  
28 Federal Rule of Civil Procedure 56(e)(2) and after Plaintiff's  
failure to file any opposition despite the Court's December 10,  
2010, notice pursuant to Rand v. Rowland, 154 F.3d 952 (9th Cir.  
1998) (en banc) and Klinge v. Eikenberry, 849 F.2d 409 (9th Cir.  
1988). (See Doc. No. 28.)

1 7, 2008, Plaintiff had a dental examination with Defendant Dentist  
2 Musgrave at Centinela State Prison. At this appointment, Plaintiff  
3 requested dentures and claims he told the dentist he had difficulty  
4 chewing his food due to the limited time he was given to eat.  
5 Plaintiff had nine posterior teeth in occlusion and claims he was  
6 informed he did not qualify for dentures as a result. Plaintiff has  
7 admitted that under institutional policy, he would have to have  
8 seven or fewer posterior teeth in occlusion to qualify for a dental  
9 prosthesis. Plaintiff alleges that Defendant Chief Dental Officer  
10 Peters at Centinela State Prison approved Defendant Musgrave's  
11 denial of the prosthesis.

12 Defendant Musgrave did not list dentures on Plaintiff's  
13 treatment plan. Under the class action-mandated dental treatment  
14 protocol, dental staff were directed that a treatment plan should be  
15 provided only when an inmate patient has seven or fewer posterior  
16 teeth in occlusion. Inmate Galindo had at least nine posterior  
17 teeth in occlusion. Defendant Musgrave did not believe there was an  
18 excessive risk to Plaintiff's health by requiring Plaintiff to  
19 follow the mandated dental protocols. Defendant Musgrave believed  
20 that Plaintiff would still be able to eat with his nine posterior  
21 teeth that were in occlusion—only that Plaintiff might be inconven-  
22 ienced by having to eat a bit slower than if he had dentures.

23 Defendant Musgrave never became aware that the lack of  
24 dentures caused Plaintiff any serious health problems due to not  
25 receiving adequate nutrition or otherwise.

26 At all relevant times, Defendant Smelosky was the warden at  
27 Centinela State Prison.  
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## II. LEGAL STANDARD

Federal Rule of Civil Procedure 56(a) mandates the grant of summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The standard for granting a motion for summary judgment is essentially the same as for the granting of a directed verdict. Judgment must be entered "if, under the governing law, there can be but one reasonable conclusion as to the verdict." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-51 (1986). However, "[i]f reasonable minds could differ," judgment should not be entered in favor of the moving party. Id.; see also Blankenhorn v. City of Orange, 485 F.3d 463, 470 (9th Cir. 2007) ("If a rational trier of fact might resolve the issue in favor of the nonmoving party, summary judgment must be denied.") (alteration omitted).

The parties bear the same substantive burden of proof as would apply at a trial on the merits, including plaintiff's burden to establish any element essential to his case. Anderson, 477 U.S. at 252; Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Lack of a genuine issue of material fact on a single element of a claim for relief is sufficient to warrant summary judgment on that claim. Celotex Corp., 477 U.S. at 322-23.

The moving party bears the initial burden of identifying the elements of the claim in the pleadings, or other evidence, and “‘showing’ -- that is, pointing out to the district court -- that there is an absence of evidence to support the nonmoving party’s case.” *Id.* at 325; see also Fed. R. Civ. P. 56(c). “A material

1 issue of fact is one that affects the outcome of the litigation and  
2 requires a trial to resolve the parties' differing versions of the  
3 truth." S.E.C. v. Seaboard Corp., 677 F.2d 1301, 1305-06 (9th Cir.  
4 1982). The burden then shifts to the nonmoving party to establish,  
5 beyond the pleadings, that there is a genuine dispute for trial.  
6 Celotex Corp., 477 U.S. at 324.

### 7 **III. DISCUSSION**

#### 8 **A. Defendants Are Entitled To Summary Judgment**

9 Based on the undisputed facts of this case, a dispute of fact  
10 does not exist regarding whether Defendants violated Plaintiff's  
11 Eighth Amendment rights by denying his request for dentures.  
12 Defendants are entitled to summary judgment as a matter of law as a  
13 result.

14 The threshold requirement to state a claim under 42 U.S.C.  
15 § 1983 is the identification of a cognizable right that defendants  
16 violated. See Devereaux v. Perez, 218 F.3d 1045, 1052 (9th Cir.  
17 2000). The Court construes Plaintiff's sole claim for "Right to  
18 dental care" as a claim under the Eighth Amendment's proscription  
19 against cruel and unusual punishment based on the denial of medical  
20 care. The Eighth Amendment "requires neither that prisons be  
21 comfortable nor that they provide every amenity that one might find  
22 desirable." Hoptowit v. Ray, 682 F.2d 1237, 1246 (9th Cir. 1982).  
23 Instead, it proscribes the "unnecessary and wanton infliction of  
24 pain," or punishment "so totally without penological justification  
25 that it results in the gratuitous infliction of suffering." Gregg  
26 v. Georgia, 428 U.S. 153, 173, 183 (1976). When an official's  
27 failure to act serves as the basis for the claim, courts use the  
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1 standard of "deliberate indifference," which is stricter than mere  
2 negligence. Estelle v. Gamble, 429 U.S. 97, 104, 106 (1976).

3 Prison officials demonstrate deliberate indifference toward  
4 an inmate by knowing of and disregarding an excessive risk to inmate  
5 health or safety. Farmer v. Brennan, 511 U.S. 825, 837 (1994). To  
6 constitute deliberate indifference to an inmate's medical care, two  
7 factors must be present: (1) an objective component—the course of  
8 treatment doctors chose was medically unacceptable under the  
9 circumstances; and (2) a subjective component—that officials chose  
10 that course of treatment in conscious disregard of an excessive risk  
11 to the inmate's health. Jackson v. McIntosh, 90 F.3d 330, 332 (9th  
12 Cir. 1996).

13 To satisfy the objective component for deliberate indiffer-  
14 ence, the deprivation suffered by an inmate must be sufficiently  
15 serious, meaning deprivations which result in "the minimal civilized  
16 measure of life's necessities." Wilson v. Seiter, 501 U.S. 294, 298  
17 (1991). Deliberate indifference to medical needs only amounts to an  
18 Eighth Amendment violation if those medical needs are serious.  
19 Hudson v. McMillian, 503 U.S. 1, 9 (1992). "A serious medical need  
20 exists if the failure to treat a prisoner's condition could result  
21 in further significant injury or the unnecessary and wanton  
22 infliction of pain." McGuckin v. Smith, 974 F.2d 1050, 1059,  
23 *overruled on other grounds by* WMX Techs. v. Miller, 104 F.3d 1133,  
24 1136 (9th Cir. 1997) (citations and internal quotations omitted).  
25 Routine discomfort is part of the prison sentence and does not rise  
26 to the level of deliberate indifference. Hudson, 503 U.S. at 9.

27 Although prisoners must be provided with access to adequate  
28 dental care, Hunt v. Dental Dep't, 865 F.2d 198, 200 (9th Cir.

1 1989), prison inmates are not entitled to every possible dental  
2 treatment that they might request:

3       It must be remembered that the State is not constitution-  
4 ally obligated, much as it may be desired by inmates, to  
5 construct a perfect plan for dental care that exceeds  
6 what the average reasonable person would expect or avail  
7 herself of in life outside the prison walls. . . . We are  
governed by the principle that the objective is not to  
impose upon a state prison a model system of dental care  
beyond average needs but to provide the minimum level of  
dental care required by the Constitution.

8 Dean v. Coughlin, 804 F.2d 207, 215 (2d Cir. 1986) (citations,  
9 internal quotations, and brackets omitted).

10       To satisfy the subjective element, a prison official must  
11 have a sufficiently culpable state of mind to violate the Eighth  
12 Amendment. Wilson, 501 U.S. at 297. To show deliberate indiffer-  
13 ence, "[a] defendant must purposefully ignore or fail to respond to  
14 a prisoner's pain or possible medical need." McGuckin, 974 F.2d at  
15 1060. Moreover, a delay in treatment must be harmful. Id. A  
16 Plaintiff must show the course of treatment chosen was "medically  
17 unacceptable under the circumstances, and the course of treatment  
18 was chosen in conscious disregard of an excessive risk to the  
19 plaintiff's health." Jackson, 90 F.3d at 332 (citations omitted).

20       The facts in this case establish that Defendants' denial of  
21 Plaintiff's request for dentures was objectively reasonable and  
22 justified. Plaintiff did not meet the CDCR's established require-  
23 ments for receiving dentures. Defendants were well within the  
24 CDCR's policies when they denied Plaintiff's request. Nor was  
25 Plaintiff's medical condition serious such that the CDCR's policy  
26 amounts to an unnecessary and wanton infliction of pain. Although  
27 Plaintiff could not eat as fast as he liked, he nonetheless was able  
28 to eat. Moreover, the facts establish that Defendants had no

1 knowledge regarding whether Plaintiff was experiencing any pain or  
 2 other harmful effects as a result of not having dentures. Nor is  
 3 there any evidence that Defendants knew that Plaintiff suffered any  
 4 actual harm. Defendants consequently did not purposefully ignore or  
 5 fail to respond to Plaintiff's pain or possible medical need. Based  
 6 on the foregoing, Defendants are entitled to summary judgment as a  
 7 matter of law on Plaintiff's Eighth Amendment claim.<sup>2/</sup>

8 **B. Defendants Are Entitled to Qualified Immunity**

9 Defendants claim they are entitled to summary judgment  
 10 because they are immune from suit. Because Plaintiff cannot make  
 11 out a constitutional violation against any of them, the undersigned  
 12 agrees.

13 Government officials are entitled to qualified immunity  
 14 "insofar as their conduct does not violate clearly established  
 15 statutory or constitutional rights of which a reasonable person  
 16 would have known." Liston v. County of Riverside, 120 F.3d 965, 975  
 17 (9th Cir. 1997) (citing Harlow v. Fitzgerald, 457 U.S. 800, 818  
 18 (1982)). The defense of qualified immunity allows for errors in  
 19 judgment and protects "all but the plainly incompetent or those who  
 20 knowingly violate the law. . . . [I]f officers of reasonable  
 21 competence could disagree [whether a specific action was constitu-  
 22 tional], immunity should be recognized." Malley v. Briggs, 475 U.S.  
 23 335, 341 (1986). Qualified immunity balances the interests of "the  
 24 need to hold public officials accountable when they exercise power

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25 <sup>2/</sup> Warden Smelosky is entitled to summary judgment on the additional  
 26 basis that he was not involved in the decision to deny Plaintiff's  
 27 dentures request and did not personally participate in this case in  
 28 any way. He is sued merely based on his status as Warden, and  
 liability cannot be found against him solely on that basis. See  
Hydrick v. Hunter, 500 F.3d 978, 988 (9th Cir. 2007); Lolli v.  
County of Orange, 351 F.3d 410, 418 (9th Cir. 2003); MacKinney v.  
Nielsen, 69 F.3d 1002, 1008 (9th Cir. 1995); Hansen v. Black, 885  
 F.2d 642, 646 (9th Cir. 1989).

1 irresponsibly and the need to shield officials from harassment,  
2 distraction, and liability when they perform their duties reason-  
3 ably." Pearson v. Callahan, 555 U.S. 223, 129 S. Ct. 808, 815  
4 (2009). The Court must determine "whether, in light of clearly  
5 established principles governing the conduct in question, the  
6 officer objectively could have believed that his conduct was  
7 lawful." Watkins v. City of Oakland, 145 F.3d 1087, 1092 (9th Cir.  
8 1998).

9 The Court engages in a two-part inquiry: (1) whether the  
10 facts shown "make out a violation of a constitutional right," and  
11 (2) "whether the right at issue was 'clearly established' at the  
12 time of defendant's alleged misconduct." Pearson, 129 S. Ct. at  
13 815-16. The Court may consider these steps in any order it wishes.  
14 Id. at 818.

15 If the Court first determines that no constitutional  
16 violation has been made out, "there is no necessity for further  
17 inquiries concerning qualified immunity." Saucier v. Katz, 533 U.S.  
18 194, 201 (2001), *overruled on other grounds by Pearson*, 129 S. Ct.  
19 at 818.

20 Because, as discussed above, Plaintiff has failed to make out  
21 a constitutional violation against any of the Defendants, the  
22 undersigned's inquiry ends there. After all, it would be futile to  
23 attempt to determine whether a constitutional right was clearly  
24 established when no such violation exists in the first place. See  
25 Saucier, 533 U.S. at 201 ("If no constitutional right would have  
26 been violated were the allegations established, there is no  
27 necessity for further inquiries concerning qualified immunity.");  
28 see also Tennison v. City & County of San Francisco, 570 F.3d 1078,

1 1092 & n.7 (9th Cir. 2009) (same; recognizing Pearson's partial  
2 overruling of Saucier).

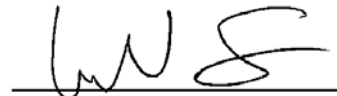
3 Based on the foregoing, all three Defendants are entitled to  
4 qualified immunity and are immune from suit as a result.

5 **III. CONCLUSION**

6 The Court GRANTS Defendants' Motion and enters judgment in  
7 Defendants' favor. The Clerk of Court is directed to close this  
8 matter accordingly.

9 IT IS SO ORDERED.

10 DATED: June 21, 2011

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13 Hon. William V. Gallo  
14 U.S. Magistrate Judge  
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